

1 **IN THE UNITED STATES DISTRICT COURT**
2 **FOR THE DISTRICT OF MONTANA**
3 **HELENA DIVISION**
4 _____
5 _____

6 **Case No. CR-07-24-H-CCL**

7
8 **UNITED STATES OF AMERICA,**

9 **Plaintiff,**

10 **versus**

11 **DANIEL DIETZ,**

12 **Defendant.**

13 *****

14 **TRANSCRIPT OF PROCEEDINGS**

15 **Sentencing**

16 Courtroom

16 United States District Court

17 Paul G. Hatfield Courthouse

17 Helena, MT 59601

18 September 23, 2008

19 **The Honorable Charles C. Lovell, Presiding**

20 *****

21 **Julie L. Sampson**

22 **Court Reporter**

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PROCEEDINGS

(The proceedings began at 10:53 a.m.)

THE BAILIFF: All rise.

THE COURT: Be seated, please. The next matter this morning is criminal cause 07-24, a Helena Division case, United States of America against Daniel Dietz. The Defendant is present with his counsel, Mr. Donahoe. The United States is here by Ms. Stewart. We are ready to proceed.

This is the time set down for sentencing. Mr. Dietz and Mr. Donahoe, will you come to the podium, please.

Mr. Dietz, you've read over the Presentence Report, have you?

THE DEFENDANT: Yes, Your Honor.

THE COURT: And have you had an ample opportunity to study it and to ask Counsel about its content, also to ask him about your rights in connection with the report and with sentencing?

THE DEFENDANT: Yes, I have, Your Honor.

THE COURT: Very well. Michael, you've had ample time?

1 MR. DONAHOE: Yes, Your Honor.

2 THE COURT: Ms. Stewart?

3 MS. STEWART: I have, Your Honor. Thank
4 you.

5 THE COURT: Very well. The Presentence
6 Report, then, will be placed in the record under
7 seal. And Mr. Dietz, it was in April, I think
8 April 11 this year, when you pleaded guilty to
9 Counts I and II of a two-count indictment. You
10 also pled true to the forfeiture allegation
11 relating to the computer used in the offense.
12 Count I charged you with coercion and entitlement
13 of a minor in violation of federal law, and Count
14 II charged transfer of obscene material to a minor
15 in violation of federal law.

16 Now, there were two objections to the
17 Presentence Report. I wonder what the present
18 status of those is. With respect to restitution,
19 is this figure agreed upon between the parties?
20 And the number I have here is \$3,524.01.

21 MR. DONAHOE: Your Honor, we came, in the
22 sentencing memorandum, to a concluding number of
23 \$889.30.

24 THE COURT: Was that the total amount?

25 MR. DONAHOE: No, Your Honor. The first

1 total amount was \$4,376.30, and then I think
2 probation reduced that to the number that Your
3 Honor just recited.

4 THE COURT: All right. Let us reduce
5 this to a legal issue, if possible, so that the
6 Court can resolve it. Otherwise, we'll have to
7 take testimony on the facts involved, so that the
8 Court can determine the reasonable amount involved.
9 The -- I understand there were some attorney's fees
10 set out here which you objected to, and they have
11 been removed.

12 It seems to the Court here that
13 restitution in the case is appropriate and
14 applicable, not only for the minor person, the
15 person who was directly harmed, but also because
16 she was under the age of 18. Her legal guardian --
17 and here the legal guardian, of course, may assume
18 victim's rights under this section. Lost income,
19 about which we were concerned, in part, is
20 specifically approved by the statute as an item of
21 restitution.

22 The Pizzichiello case in the Ninth
23 Circuit has been considered, where the panel
24 approved the sum of \$21,000 in lost wages and
25 \$7,500 in travel expenses awarded to family members

1 of the deceased victim. Expenses incurred during
2 investigation and prosecution are recoverable and
3 available for restitution.

4 So, now, as I understand the probation
5 officer's investigation, he compared the income of
6 the guardian, which she regularly received from her
7 position, during months not involved with handling
8 the infant's case to the monthly income when she
9 was required to devote time away from her job and
10 take care of the minor.

11 In this particular case, that amount,
12 that differential due to her being unable to work
13 during those hours and days and times, is what it
14 adds up, in addition to what you agreed to, to the
15 total figure of 3,500. Now, if we can agree upon
16 those facts, then I think the question is resolved,
17 because the Court holds that those are recoverable
18 costs and that they should be part of the
19 restitution.

20 So, unless you have anything to show that
21 she didn't do these things that she claims that she
22 did, I think that figure seems to be a fair figure.
23 What do you say to that, Mr. Donahoe?

24 MR. DONAHOE: We'll stipulate to that,
25 Your Honor.

1 THE COURT: Very well. That figure is
2 \$3,524.01. And the Court, as part of the sentence
3 here today, ultimately will award that.

4 Now, the other objection related to the
5 five-point enhancement, but I believe that
6 objection is withdrawn.

7 MR. DONAHOE: It is.

8 THE COURT: Is that correct?

9 MR. DONAHOE: It is, Your Honor.

10 THE COURT: Is there anything further you
11 want to say about it?

12 MR. DONAHOE: No, Your Honor, beyond the
13 papers.

14 THE COURT: Then with the disposition of
15 those two objections, the Court is prepared to make
16 findings with respect to the case. First of all,
17 the total offense level is found to be 34. The
18 criminal history category is found to be 4. There
19 is a mandatory minimum sentence of ten years as to
20 Count I, there is a statutory maximum sentence of
21 life as to that count, and ten years as to Count
22 II. The Court finds the Guideline range to be 210
23 to 262 months, the fine range to be \$17,500 to
24 \$175,000.

25 Any objection to those determinations,

1 Ms. Stewart?

2 MS. STEWART: No, Your Honor.

3 THE COURT: Mr. Donahoe?

4 MR. DONAHOE: No, Your Honor.

5 THE COURT: Very well. We are ready to
6 proceed, then.

7 Mr. Dietz, before the Court formulates
8 and imposes your sentence, you have a right of
9 allocution. You can exercise that right by
10 testifying, by making a statement to the Court, by
11 calling witnesses, by having your counsel speak for
12 you, any or all those things as you see fit in your
13 own best interest. So, this is your time, and you
14 may proceed.

15 MR. DONAHOE: Your Honor, we would please
16 call Linda Frantz.

17 THE COURT: Very well. Come forward and
18 be sworn, please.

19 COURTROOM CLERK: Right here, please.
20 Please raise your right hand.

21

22 LINDA FRANTZ,

23 **having been first duly sworn, testified under**
24 **oath as follows:**

25 THE WITNESS: I do.

1 COURTROOM CLERK: Please state your full
2 name and spell your last name.

3 THE WITNESS: Linda Frantz, F-R-A-N-T-Z.

4 COURTROOM CLERK: Thank you. Please have
5 a seat in the witness stand and speak clearly into
6 that microphone.

7 MR. DONAHOE: Judge, do you want Dan to
8 sit down?

9 THE COURT: I think that would be fine.

10

11 **DIRECT EXAMINATION**

12 **BY MR. DONAHOE:**

13 **Q. Ma'am, are you related to Dan Dietz?**

14 **A. Yes.**

15 **Q. How so?**

16 **A. I'm his mother.**

17 **Q. Where was Daniel raised?**

18 **A. In Pennsylvania, Bethel.**

19 **Q. Can you tell us what the composition of your**
20 **family was in the early years.**

21 **A. Uhm, how early? You mean --**

22 **Q. I want you to start from the beginning, if you**
23 **could just give me a quick history on when Dan was born,**
24 **how many brothers and sisters he has and so forth.**

25 **A. Okay. He was born in 1970 and he had an older**

1 sister. His father and I divorced.

2 **Q. What was Mr. Dietz's name?**

3 A. Walter.

4 **Q. How old was Dan when you divorced from**
5 **Walter?**

6 A. I believe he was three -- three or four.

7 **Q. Did Dan remain in contact with Walter?**

8 A. They did. It wasn't -- it wasn't every
9 weekend, but he tried to -- his father tried to see him
10 as much as he could. And then I remarried and we had
11 another daughter.

12 **Q. And that would be Melissa?**

13 A. Actually, no, that's Michelle.

14 **Q. I'm sorry. Michelle?**

15 A. She is not here. And during that time, his
16 dad used to come and take them and they would go away
17 and do things together, and one weekend they went on a
18 boating trip. And during that trip, his father drowned.
19 They went over a falls. And Danny was with him, saw him
20 go under the water. Danny was pulled from the water,
21 and it took a week for them to find his father's body.
22 At that time he was nine, I believe.

23 **Q. So Dan was nine years old when that**
24 **happened?**

25 A. Yeah.

1 **Q. Okay. Now, as a result of the divorce from**
2 **Walter, was Dan having his struggles just in connection**
3 **with that?**

4 A. He probably did, but I didn't notice a lot of
5 things. I think when I remarried there were some
6 problems there with his stepfather. His stepfather was
7 a few years younger than me and took on a family of two
8 children and a wife, and then we had a third child. So
9 his -- it was just a lot for him, which caused
10 problems.

11 **Q. After Walter became deceased or died in the**
12 **boating accident, did you notice any difference -- or**
13 **begin to notice any difference in Dan?**

14 A. I did then.

15 **Q. Can you describe that for us.**

16 A. During the week that they searched for his
17 dad's body he was having problems in school. They both
18 went back to school, and I think we all just wanted to
19 believe that they were going to find him and he was
20 going to be okay. So they went back to school to try to
21 at least have a normal life. I did get a call from the
22 school that he was acting out, and I told them maybe I
23 need to get him some help, take him out of school and
24 get him some help, and they said no, we know what has
25 happened and we'll work with him.

1 **Q. Uh-huh.**

2 A. And I put my faith in them. I was young. And
3 things just progressed and got worse. Dan never talked
4 to me about it. I asked him, I said, "Danny, you got to
5 talk to me, you have to tell me how you're feeling," and
6 he looked at me, he said, "I'm going to tell you this
7 one time." He said, "We went over the falls and the
8 last thing I saw was daddy's face." And he screwed up
9 his face and made the face that his father had made when
10 he went under the water, and that's the last thing he
11 remembers seeing of his dad. And he said, "I'll never
12 talk to you about it again."

13 **Q. And he didn't, did he?**

14 A. He didn't.

15 **Q. It wasn't really discussed in the family or**
16 **worked through in any sort of grieving process, was**
17 **it?**

18 A. No, it wasn't. His stepfather had a problem
19 with it. I can't explain it. I don't even want to try.
20 There was an incident where Danny had said to his
21 stepfather -- he called him dad, and his stepfather
22 said, "I'm not your dad. Don't ever call me dad." And
23 he just recently told me -- he just recently told me
24 within the last two months that that was the day that he
25 never felt safe at home again. Home was not a safe

1 place for him.

2 Q. So if we move on from the age of ten or so and
3 through the remainder of those middle school years and
4 into high school, did things get better, remain the
5 same, or get worse?

6 A. They got worse. Uhm, Danny was always very
7 respectful to myself and to his stepfather, to the
8 parents of all the kids he went to school with. What he
9 did when I couldn't see him -- and I -- I know that
10 there were problems. He was good at keeping it from me.
11 But, yes, it did get worse.

12 Q. Did you finally kind of lose contact with
13 Dan?

14 A. We did. When he graduated high school he came
15 out to Montana. My father lived out here and they lived
16 together. He actually came out to help take care of
17 him. And he got in contact with other family members
18 and started to get involved with the church and his life
19 started to turn around. And he met his wife. They
20 married. They started working with Indian children, had
21 two children of their own, and I thought that things
22 were finally -- finally working themselves out. And he
23 worked through some of his issues with his father, but
24 apparently not all of them.

25 Q. Then at some time after he married Theresa

1 **they became divorced, didn't they?**

2 A. They did. His financial situation got worse
3 and he came back to Pennsylvania to maybe find a better
4 job and get those things straightened out. But when he
5 came back there, that's when they divorced, after a few
6 months, and things really got bad.

7 **Q. Now, despite the divorce, have you stayed in**
8 **contact with Theresa and your granddaughters?**

9 A. Yes, we have.

10 **Q. So you've tried to keep intact some semblance**
11 **of family, huh?**

12 A. Yeah, we do.

13 **Q. As a result of these events have you actually**
14 **been reacquainted or reunited with Theresa?**

15 A. Yes, we have. We were here a few weeks ago.
16 We were out a couple times. Every time we come out we
17 go see Theresa. We visit the girls. This time we were
18 going to stay with them. We didn't, then, only because
19 of, you know -- but, yeah, we get along fine. And
20 Theresa is a good mother and she -- she is part of the
21 family.

22 **Q. Now, have you and Theresa discussed, or at**
23 **least in principle agreed, that no matter where Dan**
24 **might wind up, hopefully maybe someplace close to you,**
25 **that you would help facilitate visits between him and**

1 **his children?**

2 A. Yes, we absolutely would try to do the best
3 that we can to make sure that they stay in contact with
4 each other.

5 **Q. You are going to be there for Dan and for your**
6 **granddaughters, correct?**

7 A. Absolutely.

8 **Q. Do what you can to see what you can do to help**
9 **Dan recover and become a productive member of society?**

10 A. Absolutely.

11 **Q. Now, did these events and circumstances**
12 **connected with this case really present an opportunity**
13 **for people in the family to start discussing some of**
14 **Dan's issues and problems?**

15 A. We have. And Dan and his stepfather have
16 actually mended a lot of the differences between them.
17 My husband's come to see that in the early years of our
18 marriage a lot of those things helped to shape Dan for
19 who he is today, but he also had a lot of good qualities
20 that Danny's come to see and they have become very
21 close.

22 **Q. Likewise, with regard to Dan and his sister**
23 **Tina, did you learn something that may have gone unsaid**
24 **between brother and sister in relation to dad's death?**

25 A. I did.

1 **Q. What was that?**

2 A. I found out that the day of the accident was
3 their father's birthday and Tina wanted them to stay
4 home and spend that day -- I need water. Tina wanted
5 her father and her brother to stay at home and spend the
6 birthday at home. Danny wanted to go boating. His
7 father loved boating, and he gave in and he said, "Let's
8 go boating." And Tina was very angry about that. When
9 the accident happened and their father drowned, she
10 blamed Danny because if he wouldn't have begged, they
11 wouldn't have gone boating.

12 **Q. Did you come to find that Dan had actually**
13 **carried that as guilt throughout most of his life?**

14 A. He did. That was part of his -- yes, he did.
15 He blamed himself and I think he's been running from
16 that pain all these years.

17 **Q. Can you see in some way that Dan's lost-soul**
18 **personality is a derivative of all of these things in**
19 **his early life?**

20 A. Derivated?

21 **Q. Comes as a result of?**

22 A. Yes. I do.

23 **Q. Do you see -- are brother and sister talking**
24 **now? I mean, have they communicated on some of these**
25 **points, started to address these points?**

1 A. Yes, they have. And I think they have crossed
2 a huge hurdle. This is a very tragic situation for
3 everybody, but out of this I've seen Danny and Tina come
4 together and mend some of those -- a lot of the hurts
5 and the pains. It's a terrible way to have to come to
6 that point, but it's happened.

7 **Q. But nevertheless, it has happened, hasn't**
8 **it?**

9 A. Right.

10 **Q. And, in fact, Tina traveled with you here to**
11 **be here today to support her brother, didn't she?**

12 A. She did.

13 **Q. She's in the gallery, isn't she?**

14 A. Yes. She is here.

15 **Q. And other family is here, as well?**

16 A. Right. His youngest sister is here, and I
17 have a cousin and his wife are here. And there's others
18 that would have wanted to be here, but because of the
19 distance, it's been pretty difficult. And they will
20 most definitely be there for him when he comes home.

21 **Q. So, have you felt some strength as a family**
22 **coming behind Dan to stand with him?**

23 A. We've actually pulled very close. I've seen
24 in the last -- especially the last few months when Dan
25 started opening up and we've become very close.

1 **Q. All right, Ms. Frantz. I thank you for the**
2 **testimony. Is there anything else or in conclusion that**
3 **you would like the Court to know before the Court**
4 **imposes sentence?**

5 A. I would like the Court to know that we as a
6 family understand the severity of what's happened. We
7 understand that he needs to pay a price for that. I
8 understand that that price is going to be very steep.
9 But at the same time, I want him to get the counseling,
10 the help to continue to make him a better person. Dan
11 is a wonderful young man, and he's gotten lost. But
12 he's on his way back. And whatever the sentence that's
13 imposed, Dan will turn it to good.

14 And I also would like to say to the young
15 lady's family that I don't want her to get lost in the
16 system because we are so intent on prosecuting Dan, and
17 whatever help she needs, I think we need to see that she
18 gets it, too. It's a terrible, terrible tragedy and I
19 don't know what else to say. I just want you to
20 understand that we know that.

21 **Q. Do you think Dan knows that?**

22 A. Absolutely. I -- this will weigh on him for
23 the rest of his life, and he's going to live with it
24 every day of his life. But he will turn it into
25 something good somewhere along the way, which he's

1 already started doing.

2 MR. DONAHOE: Thank you, Ms. Frantz. I
3 have nothing further.

4 THE COURT: Cross examine.

5 MS. STEWART: I have just a couple
6 questions.

7

8 **CROSS-EXAMINATION**

9 **BY MS. STEWART:**

10 Q. So, Ms. Frantz, it's been approximately 30
11 years -- 30-plus years since you married your present
12 husband?

13 A. Yes.

14 Q. How many of those 30-plus years has the
15 Defendant had the problem of authority because of your
16 husband? From reading the PSR, your son clearly had
17 problems with your husband having authority over him.

18 A. I don't believe that he had problems with my
19 husband having authority over him. Uhm --

20 Q. Then was it just problems with authority
21 outside the house?

22 A. I don't even know that he had problems with
23 authority outside the house. I don't know that I agree
24 with that.

25 Q. But he did have problems outside the house.

1 **He was respectful inside the house, not respectful**
2 **outside the house.**

3 A. No, he was also respectful outside the house.
4 Even during the times that he had any kind of problems
5 that he might have had, he was still respectful, because
6 I had teachers, I had parents tell me I've never had
7 trouble with Dan; he's always been very respectful to
8 us.

9 Q. So, then, did you lose touch with the
10 **Defendant when he was about 30 -- or, I'm sorry, about**
11 **20, when his criminal history began?**

12 A. No. No.

13 Q. **He's always maintained contact with you?**

14 A. Yes. We've always been in contact. The only
15 time that we may have lost contact is before he started
16 his AA meetings and his NA meetings and things, for a
17 few months, were really bad for him. That's the only
18 time that we thought -- that we actually lost contact.

19 Q. **And you alluded to this in your comments, but**
20 **you're aware that we are here because your son**
21 **victimized a 13-year-old child?**

22 A. I know that's why we are here.

23 MS. STEWART: Pass the witness.

24 THE COURT: Anything further, Mr.

25 Donahoe?

1 MR. DONAHOE: No, Your Honor. Thank
2 you.

3 THE COURT: You may step down. Thank
4 you.

5 MR. DONAHOE: We would next call Theresa
6 Lucas, please.

7 COURTROOM CLERK: Right here, please.
8 Raise your right hand.

9
10 **THERESA LUCUS,**
11 **having been first duly sworn, testified under**
12 **oath as follows:**

13 THE WITNESS: I do.

14 COURTROOM CLERK: Please state your full
15 name and spell your last name.

16 THE WITNESS: Theresa Lucas, L-U-C-U-S.

17 COURTROOM CLERK: Thank you. Please have
18 a seat in the witness stand and speak clearly into
19 that microphone.

20

21 **DIRECT EXAMINATION**

22 **BY MR. DONAHOE:**

23 **Q. Ms. Lucas, how do you know Dan Dietz?**

24 **A. He is my ex-husband.**

25 **Q. And did you have children with Dan?**

1 A. Yes, I did.

2 Q. What are their names and ages?

3 A. Mariah Dietz, she is nine years old; Lydia
4 Dietz is seven years old.

5 Q. And you're certainly aware of what's gone on
6 here, what Dan was charged with and what he has pled
7 guilty to?

8 A. Yes.

9 Q. You were aware that he was charged and
10 convicted in State court, as well?

11 A. Yes.

12 Q. How long were you married to Dan?

13 A. Nine years.

14 Q. Would you characterize that as a good
15 marriage, a good time with Dan?

16 A. Yes.

17 Q. A decent time?

18 A. Yes.

19 Q. Did you try and raise those girls to the best
20 of your ability?

21 A. Yes.

22 Q. Did Dan try and help you with that?

23 A. Yes, he did.

24 Q. Is he close to his girls?

25 A. Yes, he is.

1 Q. All right. Now, he's been incarcerated for a
2 considerable spell here, true?

3 A. Yes.

4 Q. And fortunately, some of that incarceration
5 has been local. Have you done what you could to see
6 that Dan remains in contact with his daughters?

7 A. Yes, I have.

8 Q. Tried to keep up and make that relationship
9 solid?

10 A. Yes.

11 Q. Did you hear Ms. Frantz testify about her
12 being in town, visiting with you?

13 A. Yep.

14 Q. Have you spoken about the future?

15 A. Some, yeah.

16 Q. Some. Yeah. And are you of a mind, barring
17 unforeseen circumstances, to do what you can to see that
18 Dan will be able to maintain a relationship with his
19 kids?

20 A. Yes. I want them to know who he is.

21 Q. And considering -- I'm sorry?

22 A. I want them to know who he is.

23 Q. Do you consider -- bearing in mind what has
24 gone on in court here and in State court, do you
25 consider that Dan poses any kind of danger to the

1 girls?

2 A. No.

3 Q. So you're confident that he should maintain
4 that relationship with his kids?

5 A. Yes.

6 Q. Is there anything in conclusion that you would
7 like the Court to know before the Court imposes
8 sentence, about Dan?

9 A. He is -- was a good father at the time, the
10 short time that they were with him -- or he was with us,
11 and he continued to try to stay with them. He moved out
12 here to Montana because I moved from Pennsylvania to
13 Montana. He tried to see them as much as he could. And
14 he -- until this day he does call -- calls them and
15 talks to them and tells them he loves them, and they
16 love him. And I won't take that from them.

17 Q. Sure. When you divorced, was it hard for you,
18 Theresa?

19 A. Yeah.

20 Q. It was. Dan was kind of lost around that
21 time, wasn't he?

22 A. Uhm, I think he was just trying to find his
23 place in life.

24 Q. Yeah. He continues to have that struggle,
25 doesn't he?

1 A. Yeah.

2 MR. DONAHOE: I have nothing further.

3 Thank you.

4 THE COURT: Cross-examine.

5

6 **CROSS-EXAMINATION**

7 **BY MS. STEWART:**

8 Q. Ms. Lucas, you said -- you stated you don't
9 believe the Defendant is a danger to your daughters?

10 A. No.

11 Q. Are you confident of that at this point?

12 A. Yes.

13 Q. Although he has hurt and victimized a
14 13-year-old child?

15 A. One 13-year-old.

16 Q. Yes. And I noticed in your victim -- in your
17 letter you seemed to put a lot of blame on her?

18 A. Uh-huh.

19 Q. Although your ex-husband was a 36-year-old
20 adult male?

21 A. Right.

22 Q. And he knew she was 13 years old?

23 A. Yes, he did.

24 Q. You also know in this case that your
25 ex-husband is looking at a lengthy prison sentence?

1 A. Yes.

2 Q. Do they know why he's in prison?

3 A. Yes, they do.

4 Q. And you've talked about that with them?

5 A. Yes, I have.

6 MS. STEWART: Pass the witness, Your
7 Honor.

8 THE COURT: Redirect.

9 MR. DONAHOE: We have nothing further,
10 Your Honor. Thank you.

11 THE COURT: You may step down. Thank
12 you.

13 MR. DONAHOE: That will conclude our
14 witnesses, Your Honor.

15 THE COURT: Very well. Would you come
16 back up to the podium, please. Do you have
17 anything to say on your own behalf?

18 THE DEFENDANT: Yes, Your Honor. I'd
19 like to say first that it's really hard to express
20 in words the regret that I feel and the remorse,
21 because I know I hurt a good friend and a young
22 lady. And I recognize my full responsibility for
23 the crime. I've dealt with -- since my dad died,
24 and before that, even, tried to cover up my
25 emotions using drugs and alcohol and sex, and

1 finally in November of 2006 I found a way to stop
2 the drugs and alcohol, but I didn't understand that
3 sex was a problem, as well.

4 Then I met the victim. And I know pretty
5 deeply now how I can hurt somebody, not just using
6 drugs and alcohol, but through other ways. And
7 I've -- being clean and being able to come to terms
8 with everything that I've done in my life, all the
9 people that I've hurt intentionally and
10 unintentionally, for this last two years, year and
11 a half, especially -- I'm finally coming to a place
12 where I can deal with my emotions and I can deal
13 with the hard things that I've gone through -- in
14 life. And trying to -- I've been trying to make
15 amends to the people that I've hurt.

16 And since the day that I was addressed
17 about this incident with the victim I haven't
18 shirked responsibility, but I've accepted full
19 responsibility, never denied my responsibility in
20 the matter. And thanks to Dr. Scolatti, who is the
21 psychologist that saw me in respect to the case,
22 I've come to learn a lot about, uhm -- a lot about
23 myself mentally and emotionally.

24 And I know that beyond my 12-step
25 recovery program -- that I've not stopped doing

1 since November of 2006, not one day, because I know
2 that I'll die if I don't stop -- if I stop doing
3 the program, but beyond that, I've come to learn
4 that I need more treatment and more therapy for
5 other issues that I've got. And I hope that -- I
6 know that I'm facing a long sentence, and I just
7 hope that during that time I'll have an ability to
8 find or the opportunity to find treatment programs
9 that can help me, because I know I can't do it
10 myself.

11 And again, I just want to say I'm sorry
12 for -- to everybody that's involved, including the
13 victim and her mom, but all my friends and family
14 that have been dragged down, too, because of my
15 horrible choice. That's all I've got.

16 THE COURT: Thank you. Mr. Donahoe.

17 MR. DONAHOE: Thank you, Your Honor.
18 Judge, I'd like to begin by pointing out that Dr.
19 Scolatti isn't here today, and I said in the
20 memorandum that he would be. He was just -- it was
21 unavoidable. He couldn't be here.

22 THE COURT: I've read his report.

23 MR. DONAHOE: Right. And I did contact
24 Counsel, I wanted the Court to know, about him not
25 being here. I communicated directly with Ms. Hurd.

1 She said, in the Government's view, it was not
 2 necessary for him to be here. She was content with
 3 the report. So if the Court please, I would ask
 4 the Court to just accept the report and its
 5 content. Of course, if the Court had any specific
 6 questions, I would do what I could to work that out
 7 or whatever.

8 THE COURT: This is a difficult case.
 9 The facts here are not good. The crime was an
 10 egregious crime. In summary, the Defendant last
 11 year, March through June, met, befriended, and
 12 enticed this 13-year-old girl to engage in sexual
 13 activities. I think there were at least five
 14 occasions. Those sexual encounters included both
 15 oral and vaginal sex with the child at different
 16 times. The Defendant knowingly lured this
 17 13-year-old girl to pose for photographs displaying
 18 her engaging in sexual conduct and utilized his web
 19 camera and his laptop computer to maintain the
 20 photos.

21 Now, I was impressed with the
 22 thoroughness of Dr. Scolatti's --

23 MR. DONAHOE: Uh-huh.

24 THE COURT: -- handling of the matter,
 25 and I noticed that he was very optimistic in his

1 conclusion about the ability of the Defendant to
2 recover and straighten up and fly right. And, of
3 course, that has to be taken into account, and will
4 be. And I think it is unfortunate we don't have
5 his testimony here today, but I'm satisfied to go
6 forward with the report. And apparently the
7 Government is, too.

8 MS. STEWART: That is correct, Your
9 Honor.

10 THE COURT: Very well. You can address
11 the report in some detail if you care to emphasize
12 any part of it. I don't have any questions of you
13 about the report.

14 MR. DONAHOE: Okay. Well, Your Honor, if
15 I could continue. Thank you. I appreciate that,
16 Your Honor, and will take it into account, although
17 Dr. Scolatti is not here. And again, I apologize
18 for that, but I thought it better to go forward and
19 stay on task given its comprehensive nature and its
20 thoroughness, to which the Court has already
21 alluded.

22 I, too, was impressed with the report and
23 read it carefully and recognized that there's a
24 delicate balance contained in those papers between
25 who this individual is, what he has done, and what

1 the future may hold for him. And I recognize that
2 there are judgment calls that have to be made here
3 and that the Court is concerned about the sensitive
4 nature of those decisions.

5 My impressions of this individual are
6 that he stands apart from most, Your Honor. I've
7 spent extensive time with Dan leading up to the
8 decision to plead guilty, in preparation for
9 sentencing, during the progress and the preparation
10 of the Presentence Report, and I've come to know
11 him and I know his background. I've spent time
12 with his mother. I know his family history as
13 recounted by Dr. Scolatti. And these events and
14 circumstances, especially pertinent to his father,
15 are extraordinary.

16 I have spoken directly to Dan's sister,
17 Tina, on more than one occasion, who is present,
18 and she tells me and confides to me how it was oh
19 so difficult for her not to blame Dan for her
20 father's death. Something that Ms. Frantz left out
21 was that the weather was a little inclement that
22 day, and there was apparently some advice, at least
23 Tina understood this, that they shouldn't go on the
24 boating trip for that reason. But Dan wanted to
25 go. He and his father both enjoyed that activity.

1 And he just pressed. And in the end, after all was
2 said and done, Tina took that as, boy, I just knew
3 they should have never gone.

4 And all of this went unsaid. And there
5 was no real grieving process. And I know it's
6 pretty fashionable today to say that we have all
7 manner of help for different situations that people
8 encounter, and I was born in the '50s and we didn't
9 have that kind of help. And we just were told when
10 we encountered difficulty to kind of buck up and
11 move on.

12 Sometimes we look with a little
13 skepticism at what help there is today. Maybe do
14 we overdo it? I think what I want to impress upon
15 the Court is that Dan really didn't have anything.
16 He had a difficult situation at home with his mom
17 and his stepdad. His father becomes deceased.
18 He's a ten-year-old boy, and I can see that in my
19 mind's eye with a man telling me, "Don't call me
20 dad. I'm not your father." Yet, he has no father.
21 His real father is deceased. This is a recipe for
22 a lost soul. And his life speaks to that.

23 He could be a poster child, this
24 individual, for difficulties that one could
25 encounter due to tragic circumstances. And, yes,

1 he does move on in life. He's drug addicted. He
2 has alcohol consumption problems. Now he comes
3 into this situation where he's had sex with this
4 youngster. But he now recognizes -- and I think
5 that's where Dr. Scolatti's report gives us hope.
6 He sees -- he's starting to see and pull back the
7 curtains and look at it for what it is.

8 And not only is he doing that as an
9 individual, Dan, but his family is helping him do
10 that. His sister claims the fact that she blamed
11 her brother. His mother claims the fact that she
12 may have been remiss in not getting him help. She
13 relied on the school authorities or the people at
14 school. And they are willing to come together and
15 stand with him, even down to Dan's former spouse,
16 who displays confidence in him and says that, yes,
17 she wants Dan to continue and maintain that
18 relationship with their children.

19 So this is not a case, Your Honor, where
20 the individual is just -- not somebody that is
21 lost, but somebody that is just entirely wrong and
22 in some ways looks like just one big mistake. Dan
23 has made an egregious, egregious mistake here, and
24 he recognizes that, Your Honor.

25 He accepted responsibility for what went

1 on in the State court and for the hands-on nature
2 of his offense. He stood here and pled guilty to
3 Your Honor to the two charges that were brought
4 against him, and he now recognizes that he has a
5 life to live, but he hopes and prays that the Court
6 can grant him some leniency, taper the
7 incarceration term based on the mitigation of his
8 past life and his lack of recognition of what he
9 was doing and where he was going and lengthen the
10 supervisory term post incarceration.

11 I have every confidence, as this man's
12 counsel, that he can adapt in his incarceration,
13 during his incarceration, he can program properly.
14 He's ready to learn. He's open and he's
15 vulnerable. And respectfully, Your Honor, I think
16 we as a society should take advantage of this
17 opportunity and not throw the baby out with the
18 bath water.

19 These little girls that he's raising and
20 has the relationship with could continue to love
21 and respect their father, and he could work hard
22 and they can give him incentive to want to work
23 hard to have a life so that he can love them and
24 watch them grow up and have relationships with them
25 when they are adults. We've spoken about those

1 things. And he weeps as he stands beside me.

2 I just ask, Your Honor, please --
3 thinking about the fact that really what drives the
4 advisory sentence here is that five-point
5 enhancement for the pattern. In all technical
6 respects, it applies. But given the fact that he
7 stood up as a man and took responsibility in the
8 State court, that enhancement should not have the
9 same impact here in the wider context of everything
10 that has gone on. And I ask you please to come
11 back down. If we do, from the advisory range where
12 we are now, 210 to 262, we get closer to the
13 minimum term, to the 121 months. And I ask Your
14 Honor to please consider seriously sentencing Dan
15 to a term within that range, within that lower
16 range.

17 He's a person that's motivated. He has a
18 good heart. He wants to take this tragic life that
19 is his own and that he is the author of and admits
20 that and amend his ways and be a better person.
21 And I just have every confidence he can do it, and
22 I ask Your Honor, please give him that chance.
23 Thank you.

24 THE COURT: When the Defendant is clean
25 and sober, he does appear to be intelligent and a

1 productive member of the community, but he does
2 acknowledge that over the years the substance abuse
3 has cost him dearly.

4 THE DEFENDANT: (Nods head.)

5 THE COURT: Admits this with respect to
6 the military, his family, employment, his freedom.
7 It's true he has taken responsibility for his
8 actions. He does acknowledge that he needs
9 additional substance abuse and mental health
10 treatment, and the Court hopefully can provide
11 that.

12 Now, let's hear from United States. Ms.
13 Stewart.

14 MS. STEWART: Yes, Your Honor. It's the
15 Government's position that the 3553A factors
16 warrant a sentence within the advisory guideline
17 range, followed by lifetime supervised release.
18 This is a very serious offense, Your Honor, and I
19 want to look at the nature of the circumstances of
20 this offense that we are at. The Defendant was 36
21 years old, an adult male who pressed and seduced a
22 13-year-old into having five sexual contacts with
23 the Defendant for approximately a three-month span
24 in 2007.

25 The victim's letters address some of the

1 contacts; and from reading the 13-year-old victim's
2 letter, you can see -- you can feel the pain and
3 the hate that she's still reeling from these events
4 that were well over a year ago. And Count II deals
5 with the Defendant photographing his own genitals
6 and shipping them over the Internet to this
7 13-year-old as part of this course of conduct he
8 has with her over these three months and the
9 sexually-explicit conversations and contact with
10 her.

11 It's not a one-time event. This is a
12 serious crime. The Defendant's criminal history
13 starts at age 20. And as Your Honor pointed out
14 just a minute ago, there is significant substance
15 abuse, whether it's alcohol or marijuana, scattered
16 throughout his history. A sentence within the
17 Guideline range would deter the Defendant from
18 further criminal conduct. It would provide just
19 punishment in this case. It will hopefully protect
20 the public from further crimes by this Defendant,
21 and also then provide the treatment, both substance
22 abuse and sex offense -- sex offender wise, that
23 the Defendant needs. Thank you.

24 THE COURT: Thank you.

25 Mr. Dietz, are you ready, then, for the

1 Court to impose sentence?

2 THE DEFENDANT: Yes, Your Honor.

3 THE COURT: And Mr. Donahoe, is there any
4 reason, legal or otherwise, why sentence ought not
5 be imposed?

6 MR. DONAHOE: No, Your Honor.

7 THE COURT: The Guideline range here is
8 210 to 262 months. The Defendant is entitled to a
9 14-month credit from the sentence in the Guideline
10 range, and this is for the use of relevant conduct
11 insofar as the State's sentence is concerned.

12 Beginning, then, at the bottom of the
13 Guidelines, it is the judgment of the Court, Mr.
14 Dietz, that you be remanded to the custody of the
15 Attorney General and the Bureau of Prisons for
16 incarceration for a term of 196 months as to Count
17 I and 120 months as to Count II, those terms to run
18 concurrently, each with the other, and likewise,
19 those counts to run concurrent to the sentence
20 imposed by the Lewis and Clark County Court here in
21 Montana in Case No. ADC-2007-280.

22 Now, I'm going to recommend that the
23 Bureau of Prisons designate you for resident sex
24 offender treatment at a facility where that is
25 available. I'm going to recommend, also, that you

1 participate in the 500-hour residential drug
2 treatment program. Upon release from imprisonment,
3 you'll be placed on supervised release for a term
4 of ten years on each count, to run concurrently.

5 Now, while on supervised release, you are
6 prohibited from committing a federal, state, or
7 local crime; prohibited from possessing a
8 controlled substance; prohibited from owning,
9 using, or being in possession or constructive
10 possession of a firearm or destructive device,
11 including black powder firearms.

12 You are required to cooperate in the
13 collection of DNA as directed by the United States
14 Probation Office. You must comply with the
15 standard conditions of supervised release which
16 have been promulgated by the United States
17 Sentencing Commission. Now, this Court has
18 approved and adopted those particular conditions,
19 and they are hereby made applicable to you in their
20 entirety.

21 And there are these special conditions:
22 First of all, it's necessary that the probation
23 office be vigilant; and if it determines that you
24 need to participate in substance abuse testing,
25 that you be required to participate in that program

1 to include not more than 104 urinalysis tests, not
2 more than 104 breathalyzer tests annually during
3 the period of supervision.

4 In addition to that, the same is true as
5 to programs for mental health and substance abuse
6 treatment. It is required that you enter and
7 complete a sex offender treatment program; all of
8 these as directed by and until released therefrom
9 by the United States Probation Office. You must
10 abide by the policies of each of the programs for
11 which you are entered. And it may be that you will
12 be required to pay all or part of the costs of that
13 treatment.

14 It is a condition of your supervised
15 release that you comply with sexual offender
16 registration requirements for convicted offenders
17 in any state in which you reside. You are
18 prohibited from residing in a home or residence or
19 being in the company of a child under the age of 18
20 without the consent of the United States Probation
21 Office. You're prohibited from having contact with
22 the victims in this case without permission of the
23 United States Probation Office and the Court.

24 You're prohibited from going to or
25 loitering near any school grounds, yards, parks,

1 playgrounds, arcades, or other places primarily
2 used by children under the age of 18. You're
3 prohibited from dating or socializing with one who
4 has children residing under the age of 18 without
5 the permission of the probation office. You are
6 prohibited from possessing any materials depicting
7 sexually-explicit conduct as defined in federal
8 law, including visual, auditory, telephonic, or
9 electric -- electronic media and computer programs
10 and services. You shall not patronize a place
11 where such material or entertainment is available.

12 You're prohibited from utilizing 900 or
13 adult telephone numbers or any other sex-related
14 numbers. You're prohibited from possessing a
15 camera phone or electronic devices that could be
16 utilized for covert photography.

17 You're required to register as a person
18 -- as a sex offender with local, tribal, county law
19 enforcement in the jurisdiction in which you reside
20 or where you are employed or where you are student,
21 and you must do so within three days of your
22 arrival within that jurisdiction. In addition,
23 after any change of status, change of name or
24 residence, you must register and report such
25 changes.

For The Record Reporting Services
Julie Sampson - (406) 498-3941

1 Now, under the Adam Walsh registration
2 requirements you must submit your person and any
3 property, house, residence, vehicle, papers,
4 computer, other electronic communication data,
5 storage devices, or media and effects, all of which
6 are subject to search at any time, with or without
7 a warrant, by any law enforcement or probation
8 officer with reasonable suspicion concerning a
9 violation of conditions or unlawful conduct.

10 You are prohibited from possessing or
11 ingesting alcohol and prohibited from entering
12 within establishments where alcoholic products are
13 sold for consumption on the premises. In other
14 words, stay out of the bars, because that's a
15 source of trouble for you.

16 THE DEFENDANT: (Indicating.)

17 THE COURT: Under the Violent Crime
18 Control Act of 1994 you're required to notify the
19 United States Probation Office at least ten days
20 prior to any change of address. You're prohibited
21 from possessing police radio scanning devices or
22 computer hardware or software that would enable you
23 to monitor law enforcement activity.

24 We are not quite finished yet.

25 THE DEFENDANT: (Indicating.)

1 THE COURT: You are prohibited from
2 possessing or using a computer or other device with
3 access to any online computer service without prior
4 approval of the probation office. This includes
5 any Internet service provider, bulletin board
6 system, or any other public or private computer
7 network. You are prohibited from having access to
8 a modem during that term of supervision, except
9 with the prior approval of the United States
10 Probation Office. And, of course, you must allow
11 the probation officer to make periodic unannounced
12 examinations of any computer.

13 You're required to maintain a current,
14 complete inventory of computer access, including,
15 but not limited to, bills pertaining thereto,
16 telephone bills insofar as modem access is
17 concerned, and are prohibited from possessing
18 encryption or scanography software. You must
19 consent to third-party disclosure in an employment
20 situation unless excused by the probation officer.

21 Now, you are required additionally to
22 provide a complete record of all passwords,
23 Internet service providers, and user
24 identifications to the probation office; required
25 to submit any monthly Internet service bills and

1 shall join in any consent form to allow access to
2 those by the probation office. You are prohibited
3 from having installed any programs designed to
4 encrypt data files, folders, or volumes on any
5 media, and must, upon request, provide the
6 probation office with passwords to such equipment.

7 The probation office shall have the right
8 to install, at any reasonable time, on your
9 computer or one used by you, other than one owned
10 by an employer, filtering software designed to
11 prevent you from having access to prohibited
12 websites. And the same is true of any hardware or
13 software systems deemed by the United States
14 Probation Office as necessary to monitor your
15 computer use.

16 Now, as we indicated earlier at the
17 outset, the Court finds that restitution in the
18 amount of 3,524.01 is required to be entered in
19 this case, and the Court so orders that this amount
20 is required to be paid by you and paid -- if you're
21 unable to pay it forthwith, that it be paid at a
22 minimum rate of 10 percent of your monthly income
23 or otherwise by the probation office. And that
24 money shall be paid to the Clerk of the United
25 States District Court and by that Clerk disbursed

1 to the name and address set forth in the papers
2 here, which is Donna Davidson.

3 Now, the fine here in this case,
4 including the cost of detention and supervision,
5 exceeds \$400,000. The Court finds you do not have
6 the monetary ability to pay a fine, and I'm going
7 to waive the monetary fine in your case. I think
8 that community service would be beneficial for you
9 and also for the public, and the Court orders 250
10 hours of community service. The Court does order
11 payment of the special assessment, which is \$100
12 per count. And that is the sentence.

13 Now, I want to tell you the reasons for
14 the sentence in just a moment here, Mr. Dietz, but
15 at this point do you have any question about the
16 sentence?

17 THE DEFENDANT: I think it's pretty
18 extreme compared to the people that I've seen
19 convicted and sentenced to five years for molesting
20 and raping young boys and killing them and getting
21 five years for it. I think it's pretty extreme.
22 In 18 years I'll be 60 years old. None of those
23 things that you just read off are going to apply to
24 me at 60 years old. My kids are going to be 30
25 years old. They are not going to be kids anymore.

1 That's all. Get that off my chest. It's going to
2 be hard for me.

3 I feel like that sentence is -- that
4 sentence makes me want to do the kind of things I
5 used to do. I'm not going to do them because I'm
6 committed to my recovery, but it makes me want to
7 do the kinds of things I used to do and lash out to
8 authority, because -- you know, I respect you and
9 prayed that God's will would be done in here, and I
10 believe that -- I believe that the sentence you
11 gave out, I guess that's what I get. And I'm going
12 to do whatever I got to do day by day to continue
13 my recovery. But I want to say that it sure
14 doesn't encourage me to continue my recovery.
15 Makes me want to die, honestly -- quite honestly.

16 THE COURT: I might say that surely you
17 knew you were looking at a sentence with a
18 guideline range of 210 to 262 months.

19 THE DEFENDANT: That's the probation
20 officer's guideline, but the guideline we found was
21 the minimum of ten years, 121 to 151. That's what
22 I've been hoping for and what I thought for a long
23 time was going to be the guideline range. I knew
24 that -- when I got the Presentence Report that
25 there was a possibility now that it was going to be

1 larger. Facing it now at this moment is a lot
2 harder than knowing it might happen. So, yes, I
3 did.

4 THE COURT: All right. Well, what I said
5 to you was not do you have any objection to the
6 sentence. I asked you if you had any question
7 about it.

8 THE DEFENDANT: No, I don't.

9 THE COURT: I assume your question was if
10 you had an objection would I change it, and the
11 answer to that is no. You have been sentenced.

12 THE DEFENDANT: (Nods head.)

13 THE COURT: And sentenced, in my
14 judgment, correctly or I wouldn't have imposed it,
15 sentenced according to the law or I wouldn't have
16 imposed it. And let me tell you the reasons for
17 the sentence here.

18 Of course, we begin with the nature and
19 circumstances of the offenses. We've discussed
20 that in some detail. I don't think we need to go
21 through it again. You victimized this 13-year-old
22 girl, violated her, had sex with her, and so forth;
23 photographed your own genitals, photographed her
24 doing a sexual act.

25 You are a 37-year-old Caucasian. You're

1 the father of two, primarily raised in
2 Pennsylvania. You have a biological sister and two
3 half sisters. Your parents were divorced at an
4 early age. Your mother remarried to Mr. Frantz,
5 and over the years you've had quite a turbulent
6 relationship with him. You suffered great trauma
7 when you lost your father on a rafting trip.

8 Unfortunately, that had an impact on you
9 with bad results, according to you, at least,
10 because your father was lost. You, through life,
11 apparently have walked your own way. You did have
12 trouble with school. And this obviously was a
13 traumatic problem for you, but certainly it isn't a
14 license to do the things that you have been charged
15 with in this crime.

16 THE DEFENDANT: (Nods head.)

17 THE COURT: I think I mentioned earlier
18 that you're very intelligent, in my view. You can
19 be productive if you obey the law and stay clean
20 and sober. The Court considered the need for the
21 sentence imposed to reflect the seriousness of the
22 crime, to promote respect for the law, and to
23 provide just punishment for the offense.

24 Now, the Court doesn't just hand out this
25 sentence out of thin air. There's been a great

1 deal of study and work that has gone into this,
2 beginning with the United States Congress enacting
3 the laws, going to the United States Sentencing
4 Commission which has established that -- certain
5 guidelines and standards, a probation office
6 structure that investigates every detail possible
7 connected with the sentencing. And here you've had
8 the benefit of a psychological examination. Every
9 fact that is known has been brought out here.

10 And also to afford adequate deterrence to
11 criminal conduct. You do have some prior criminal
12 conduct, but you haven't really spent any
13 significant amount of time in custody until now.
14 And so, this particular sentence will be a
15 deterrent from further criminal conduct, and, of
16 course, it's hoped that other individuals involved
17 in similar conduct may be deterred, as well.

18 There's an element here of protection to
19 the public from further crimes. The detention
20 sentence, of course, should protect the public
21 during that period. In addition, supervision for
22 ten years here will provide more protection, and
23 under the State sentence there will be additional
24 supervision that will go on beyond that. In fact,
25 the Court reduced the supervision period of the

1 United States Probation Office to ten years from
2 lifetime supervision.

3 Now, I'm going to try to get you into the
4 500-hour drug treatment program, also any mental
5 health treatment during your incarceration term.
6 But I just want to tell you -- you're intelligent
7 enough to know -- that any change comes from
8 within. It's up to you to get into these programs,
9 to pay attention to them, and to profit from them
10 yourself.

11 The Court has considered any policy
12 statements issued by the Sentencing Commission.
13 The Court has considered the need to avoid
14 unwarranted sentence disparities, has considered
15 the restitution requirement, and, in short, has
16 followed what I think is the law here in imposing
17 sentence.

18 Now, to the extent that you have a right
19 to appeal the sentence -- and feeling the way you
20 do, maybe you should appeal it, but what you have
21 to do in order to maintain that appeal is file a
22 written notice of appeal, and you must do so within
23 ten days of entry of the Court's written judgment.
24 That's the one thing you have to do soon to
25 preserve your appeal rights. And you can visit

1 further with Mr. Donahoe about it if you're
2 considering an appeal. That's your statutory
3 warning.

4 Anything further from the Government?

5 MS. STEWART: No, Your Honor.

6 THE COURT: Anything further from the
7 defense?

8 MR. DONAHOE: No, Your Honor.

9 THE COURT: The Defendant is remanded to
10 the custody of the marshal. Court's adjourned.

11 THE BAILIFF: All rise.

12
13 **(Proceedings concluded at 12:20 p.m.)**
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STATE OF MONTANA }
COUNTY OF BUTTE-SILVER BOW } ss:

I, Julie L. Sampson, Professional
Court Reporter, a notary public in and for the
aforesaid county and state, do hereby certify that:

I am a duly-appointed, qualified Court Reporter; that I reported all of the foregoing proceedings had in the above-entitled action, and the foregoing transcript contains a full, true, and correct transcript of the said proceedings to the best of my ability.

IN WITNESS WHEREOF, I have hereunto set
my hand this 10th day of November, 2008.

/s/ Julie Sampson

Julie L. Sampson
Court Reporter

(SEAL) /s/ Julie Sampson
Julie L. Sampson
Notary Public for the State of Montana
Residing at Butte, Montana
My Commission Expires July 10, 2010

*For The Record Reporting Services
Julie Sampson - (406) 498-3941*